

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1768 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI @ HASIO H. BADRU

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/08/1999

ORAL JUDGEMENT

Heard the learned advocates appearing for the
respective parties.

The petitioner herein challenges the order of
preventive detention dated 2nd December, 1998, made by
the Commissioner of Police, Ahmedabad City, under the
powers conferred upon him under sub-section (1) section 3
of the Gujarat Prevention of Anti Social Activities Act,
1985 (hereinafter referred to as 'the Act').

It is alleged that the petitioner is a 'dangerous
person' within the meaning of section 2 (c) of the Act,
and his activities are prejudicial to the maintenance of
public order. Five offences punishable under Chapter-XVI

of the IPC have been registered against the petitioner during the period from 29th October, 1996 to 26th May, 1998. Four of the said offences are pending trial. Two persons, upon assurance of anonymity, have given statements in respect of the nefarious activities of the petitioner and of the particular incidents that occurred on 25th October, 1998 and 7th November, 1998.

The impugned order has been challenged on the grounds (a) on the date of the detention, the petitioner was in judicial custody and thus having been put out of the harm's way, the order of preventive detention was not warranted; (b) the preventive action under the Act had been taken more than six months after the date of the last of the offences registered against the petitioner and is, therefore, vitiated; and (c) the representation made to the Detaining Authority was not expeditiously dealt with and undue delay in forwarding the said representation to the State Government would vitiate the continued detention of the petitioner.

I find no substance in either of the contentions raised before me. Be it noted that though the offence was registered against the petitioner on 26th May, 1998, the petitioner in that connection was arrested on 29th November, 1998. The statements of the witnesses were recorded on 30th November, 1998 and 1st December, 1998. The Detaining Authority having verified the said statements on 2nd December, 1998, has made the order on the same day. The preventive action taken against the petitioner, therefore, can not be said to be delayed as contended. Besides, the Detaining Authority was alive to the fact that the petitioner was in judicial custody. However, he has formed an opinion that the petitioner may apply for release on bail and if he makes such an application, it was likely that he may be released on bail, and after his release on bail, he may continue his nefarious activities. The Detaining Authority has recorded his subjective satisfaction in respect of the necessity to detain the petitioner under the Act irrespective of the fact that he was in judicial custody at the relevant time. The representation against the impugned order of detention was made on 27th February, 1999, and was delivered in the Registry of the Detaining Authority on 3rd March, 1999. The same was forwarded to the State Government on 10th March, 1999. This delay of 7 days has been satisfactorily explained by the Detaining Authority. It is stated that the Registry, inadvertently, had sent the representation to the officer having no authority. It was, therefore, required to be forwarded to the Detaining Authority. The Detaining

Authority received the same on 10th March, 1999, and forwarded the same to the State Government on 10th March, 1999. If the delay has been caused on account of a bonafide mistake by a Clerk in the Registry, the same should not vitiate the order of detention.

Petition is, therefore, dismissed. Rule is discharged.

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JOSHI